



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/154200

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 11, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on February 04, 2014, at Kenosha, Wisconsin.

The issue for determination is whether evidence submitted on behalf of Petitioner is sufficient to demonstrate that a prior authorization request for a speech language therapy (SLT) evaluation and various SLT therapies meets the criteria necessary for payment by the Wisconsin Medical Assistance Program.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

I

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Theresa Walski

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. A prior authorization request (PA) seeking Medicaid payment for 48 sessions of speech language therapy (SLT) at a frequency of twice per week was filed on behalf of Petitioner by his provider

Tender Touch Therapy, LLC on or about September 5, 2013. The therapy was to start September 5, 2013 and was noted on the PA to cost \$5970.00.

3. Petitioner is 8 years of age (DOB 09/13/05). His diagnosis per the PA includes 'developmental speech dis' (assumed to be disorder). He lives with his family and does attend school (he is in the second grade) with some SLT through the school system. In essence, the goals for the private therapy were to identify breakdowns in communication, make eye contact and improve intelligibility. He did have some speech language therapy from the provider to the extent allowed without prior authorization.
4. The Department denied this PA contending that the evidence does not show that requested SLT has been demonstrated to be medically necessary.

### **DISCUSSION**

Speech therapy is covered by MA under *Wis. Admin. Code, §DHS 107.18*. Generally it is covered without need for prior authorization (PA) for 35 treatment days, per spell of illness. *Wis. Admin. Code, §DHS 107.18(2)(b)*. After that, PA for additional treatment is necessary. If PA is requested, it is the provider's responsibility to justify the need for the service. *Wis. Admin. Code, §DHS 107.02(3)(d)6*. If the person receives therapy in school or from another private therapist, there must be documentation of why the additional therapy is needed and coordination between the therapists. Prior Authorization Guidelines, Physical, Occupational, and Speech Therapy, Topics 2781 and 2784.

When determining whether to approve therapy, the Department must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, §DHS 107.02(3)(e)*:

(e) *Departmental review criteria*. In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
  3. Is appropriate with regard to generally accepted standards of medical practice;

4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

*Wis. Admin. Code, §DHS 101.03(96m).*

As with most public assistance benefits the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services*, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003). In other words, it is a Petitioner's burden to demonstrate that s/he qualified for the requested continued services by a preponderance of the evidence. It is not the Department's burden to prove that s/he is not eligible.

Further, I note that Medicaid is meant to provide the most basic and necessary health care services at a reasonable cost to a large number of persons and must authorize services according to the Wisconsin Administrative Code definition of medical necessity and other review criteria noted above. It is not enough to demonstrate a benefit; rather, all of the tests cited above must be met.

Both the Department and provider have submitted written arguments of fair length. Exhibits #'s 3 and 5. I am not reproducing them here. But, in brief, my understanding of the Department position is that the deficits in the prior authorization request included, though are not necessarily limited to, a lack of documentation of coordination of services with school and the provider did not supply the original evaluation.

While the provider response is overly detailed, in a nutshell it argues that Petitioner has intelligibility issues which necessitate the private SLT and that submission of an IEP with the PA is sufficient to show coordination. I completely disagree. There has to be measure of coordination beyond a review by the provider of the IEP. Indeed, I note that on-line provider handbook located at <https://www.forwardhealth.wi.gov/WIPortal> contain guidelines for obtaining prior authorization of services with guidelines for speech language therapy found under the category Therapies: Physical, Occupational & Speech Language Pathology. Requirements there mandate communication to avoid duplication of services, to ensure service coordination and to facilitate continuity of care. *See Topics 2781 and 2784 under the subheadings of Provider Enrollment & On-going Responsibilities/Communication/Requirements.*

Petitioner's parents appeared for the hearing. The DHA provided a translator. Their testimony, as I understood the translation, indicated that Petitioner did get SLT at Tender Touch for 35 sessions that are allowed before a prior authorization is required. SLT then then stopped. When Petitioner was receiving SLT his speech was clearer, eye contact improved, his frustration level decreased and behavior improved including at school, he stopped walking on his knees and was able to sit longer in school. When the therapy stopped he reverted to sucking on his fingers, anxiety increased and the improvements just noted began to regress. The school did not provide a home carry over program and the home program from Tender Touch was minimal.

I found the parents to be credible. Their testimony and tone was reasonable and respectful. Records from school show them to be interested in their son's well-being, e.g., asking that the school provide home work for Petitioner. Their testimony convinces me that the SLT that Petitioner had did receive was beneficial. Though I found the written argument of the Department overall to be more persuasive than that of the provider, I am approving a modified amount of SLT. I am approving 24 SLT sessions with the

time of use of those sessions limited to the period from the end of the 2013-14 school year and the beginning of the 2014-15 school year. I would expect a future PA from this or other provider of the family's choosing to, on a very practical level, better demonstrate the ongoing cooperation and coordination of services provided by public resources (Medicaid and school - also paid for, in part, with Medicaid dollars) so as to assure that all of the criteria mandated by law for approval of Medicaid payment are met.

As an aside here I also note for Petitioner's parents, that a provider may not charge a recipient for services if a PA is denied unless that recipient has been advised of this before receiving the service. *Wis. Admin. Code, § DHS 106.04(3)(a)*.

*NOTE: Petitioner's provider will not receive a copy of this Decision from the Division of Hearings and Appeals but Petitioner's parents are free to share it with their provider if they so desire.*

### **CONCLUSIONS OF LAW**

That Petitioner's parent's testimony is sufficient to demonstrate that some speech language therapy for Petitioner is warranted and thus meets the criteria necessary for payment by the Wisconsin Medicaid Program.

**THEREFORE, it is**

### **ORDERED**

That Petitioner's provider may submit a new PA for no more than 24 SLT sessions with the time of use of those sessions limited to the period from the end of the 2013-14 school year and the beginning of the 2014-15 school year. This order does not provide for Medicaid payment for any SLT that was or is provided under this PA outside of the end of the 2013-14 school year to the beginning of the 2014-15 school year.

In all other respects this appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

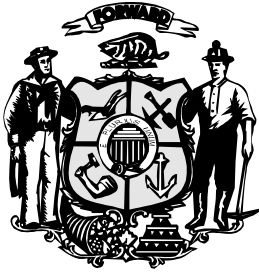
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 24th day of April, 2014

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on April 24, 2014.

Division of Health Care Access and Accountability